

Preparing for Guardianship



Parents need to have a plan to address guardianship of any child with special needs. Whether because the minor child reaches the age of majority (usually 18, though it varies by state) or the parents are unable to provide further care due to death or incapacity, guardianship issues will arise. Parents should consider the needs of their child and the capabilities of the potential guardian when making their selection. Guardianship powers and duties vary from state to state, but include oversight of medical, educational and financial issues.

Guardianship and Conservatorship

A guardian can assume powers and duties related to both personal and financial matters, but sometimes, a conservator is also appointed. A conservator is granted the power to make financial decisions, while the guardian retains decision-making powers related to the person.

Guardians and conservators (if necessary) of a minor can be selected by a parent through a will or other formal writing. It is important for a parent to also consider alternative guardians in case their first choice is unavailable. A court will select a guardian/conservator if preparations have not been made by the parents.

Once a child reaches the age of majority, parental rights are terminated. This means, if necessary, any guardian/conservator would be appointed by a court. Unless they are appointed as the legal guardian, parents will no longer be able to manage their adult child's medical, educational or financial matters. Anyone seeking guardianship must petition a court to be appointed. The court will consider whether the adult with special needs is able to provide for his/her own personal or financial affairs. If the court finds the adult to be not competent to handle these needs and affairs, a guardian will be appointed. A guardian

ad litem is someone, often a lawyer, appointed by a court during a legal matter to protect the rights of a minor child or person with a disability.

The Impact of an Interstate Move

An interstate move requires a guardian/conservator to obtain a court order from the current state of residence allowing the transfer of guardianship to another jurisdiction. Again, laws and procedures vary greatly by state and it is important to consult with local counsel.

Planning ahead for guardianship can help families avoid major problems when a child with special needs reaches the age of majority, or in the event of an unexpected death of a parent. Preparing guardianship paperwork, a letter of intent and documents such as the *Special Care Organizational Record* can be very useful in this process. The installation's Exceptional Family Member Program office and Office of the Judge Advocate General can provide additional information and referrals.



MilitaryOneSource.mil/EFMP

Exceptional Family Member Program support is available for military families with special needs. For more information, please contact your installation EFMP office or visit MilitaryOneSource.mil/EFMP, an official Department of Defense website.

